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<b>D.L., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 11-294</b>
	)	<b>Issued: September 8, 2011</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>San Francisco, CA, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On November 11, 2010 appellant, through her representative, filed a timely appeal from the May 28 and August 25, 2010 merit decisions of the Office of Workers' Compensation Programs (OWCP), which denied separate recurrence claims. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant's August 24, 1992 employment injury caused a recurrence of disability for work beginning May 7, 2001 or November 14, 2008.

On August 24, 1992 appellant, then a 32-year-old letter carrier, sustained an injury in the performance of duty when her left knee struck the bumper of her postal vehicle. She declined

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

medical attention and did not stop work at that time. OWCP accepted her claim for left knee strain. It later accepted right hip contusion and lumbosacral strain.<sup>2</sup> Appellant received compensation for wage loss and a schedule award for permanent impairment of both lower extremities due to her back condition.<sup>3</sup>

Appellant filed a claim for compensation alleging that her August 24, 1992 employment injury caused a recurrence of disability from May 7 to 29, 2001. Her orthopedic surgeon, Dr. Thomas Grotz, supported total disability beginning May 7, 2001 as a result of prolonged sitting. He found that appellant had not recovered from her initial condition, which was prone to recurrence. Dr. Thomas Dorsey, an orthopedic surgeon and OWCP referral physician, disagreed. He found that appellant had no significant anatomic findings in her lumbar spine or right hip on examination, and he noted there was no medical evidence to support that she had any recurrence related to those areas in May 2001.

To resolve the conflict, OWCP referred appellant, together with the case record and a statement of accepted facts, to Dr. Harry A. Khasigian, a Board-certified orthopedic surgeon, who examined appellant on July 28, 2010. Dr. Khasigian noted her complaints and related the history of her 1992 employment injury. He described his findings on physical examination and reviewed diagnostic tests. Dr. Khasigian diagnosed mild lumbar spondylosis with mild degenerative disc disease and neural foraminal narrowing without radiculopathy. He also diagnosed right patellofemoral and lateral compartment joint space narrowing and chondromalacia without meniscal tear, as well as chronic patellofemoral arthrosis secondary to postural patellar subluxation and secondary chondromalacia due to postural abnormalities.

Dr. Khasigian noted that the August 24, 1992 employment injury caused a mild contusion of the left and right knees and a lumbar spine strain with sclerotomal pain to the right iliac crest. He noted that appellant had minimal findings when evaluated at the emergency room, was subsequently seen by a rheumatologist and orthopedist with essentially normal examination “and her condition resolved.” Dr. Khasigian explained that appellant underwent a significant amount of medical treatment unrelated to her minor injury: “Falling forward is not an injurious situation for the lumbar spine and her treatment, evaluation and x-rays at the time did not reveal any structural abnormalities and a few months postinjury her examinations are reported as normal in the records.” He found that the panorama of treatment and repeat evaluations did not appear to have any medically reasonable association with her initial minor work injuries.

Dr. Khasigian explained that appellant, who was tall and thin with valgus knees, was predisposed over the years to patellofemoral arthrosis. He found her degenerative disc disease to be genetic and unrelated to falling forward on hands and knees in 1992. Dr. Khasigian found

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<sup>2</sup> Appellant stated after the fact that the incident caused her to fall forward to the ground and land on her hands and knees. The acting supervisor to whom she reported the injury and a superintendent who was present at the time both confirmed that appellant mentioned nothing about falling down. In 1994 an OWCP hearing representative accepted as factual, based on appellant’s testimony, that appellant had indeed fallen to the ground on August 24, 1992.

<sup>3</sup> Appellant sustained a second injury on May 31, 1994 while pulling down a route. OWCP accepted that claim for cervical strain, right shoulder strain, right shoulder impingement and cervical disc herniation. OWCP File No. xxxxxx429. That claim is not before the Board on this appeal.

that appellant's current diagnoses would be present in the absence of the 1992 injuries because she had a relatively benign work history subsequently, which would not have aggravated her conditions.

Dr. Khasigian concluded that appellant no longer suffered residuals of the injuries to her left knee, right hip or low back. Responding to questions posed by OWCP, he repeated that her 1992 injuries were minor or simple conditions of minor tissue injury that resolved within three to six weeks. They resulted in no permanent disability and had no basis for future residuals. There were no bony abnormalities. Specialists had noted normal examinations with no basis for appellant's elevated subjective complaints. Appellant's current presentation showed no condition that was trauma related.

On the issue of disability beginning May 7, 2001, Dr. Khasigian explained that the three accepted medical conditions were short-lived and would not have been present after three to six weeks from their onset in 1992. As appellant's continued treatment appeared to have no reasonable medical basis subsequent to that time frame, there appeared to be no basis relative to her minimal conditions for total disability beginning May 7, 2001.

In a decision dated August 25, 2010, OWCP denied appellant's claim that she sustained a recurrence of disability beginning May 7, 2001. It found that the opinion of Dr. Khasigian, the impartial medical specialist, was entitled to special weight and established no disability beginning May 7, 2001 relative to the accepted injuries to the left knee, right hip or low back.

On June 25, 2007 appellant accepted, under protest, a permanent limited-duty job offer. She never returned to work and remained on leave-without-pay status. On July 16, 2008 appellant was issued a Notice of Proposed Separation/Disability after being in a leave-without-pay status for 365 days. Effective December 4, 2008, she was separated due to her physical inability to meet the demands of her position, according to a notification of personnel action.<sup>4</sup> On February 6, 2009 appellant filed a claim alleging that her August 24, 1992 employment injury caused a recurrence of disability, as her employer withdrew her limited-duty position on November 14, 2008.

In a decision dated May 28, 2010, OWCP denied appellant's recurrence claim. It found that she did not meet her burden to establish that the employer withdrew a light-duty assignment made specifically to accommodate her work restrictions.

On appeal, appellant argues that Dr. Khasigian based his opinion predominantly on medical data received after the conflict and not on the medical data OWCP received prior to that date. She argues that Dr. Khasigian failed to address her permanent impairment rating and that his opinion that she suffered only soft-tissue injuries tends to conflict with OWCP's determination of the accepted conditions. With respect to her later recurrence claim, appellant argues that an injury on June 22, 2007 (OWCP File No. xxxxxx666) prevented her from being

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<sup>4</sup> On November 3, 2008 the employer verified that appellant was separated effective November 15, 2008 "as she has been absent without leave for more than 365 days." The employer stated there was no nonaccommodation issue relative to any accepted work injury.

able to drive as required by her postal vision coordinator position, which was assigned to her under OWCP File No. xxxxxx429.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.<sup>5</sup> “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>6</sup>

A “recurrence of disability” means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed her established physical limitations.<sup>7</sup>

The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.<sup>8</sup> When a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA.<sup>9</sup>

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>10</sup> When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup>

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> 20 C.F.R. § 10.5(f).

<sup>7</sup> *Id.* § 10.5(x).

<sup>8</sup> *Id.* § 10.104(b).

<sup>9</sup> *J.S.*, Docket No. 10-2104 (issued June 6, 2011) at n.8.

<sup>10</sup> 5 U.S.C. § 8123(a).

<sup>11</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

### ANALYSIS

Appellant appealed OWCP's August 25, 2010 decision denying her claim that the August 24, 1992 employment injury caused a recurrence of disability beginning May 7, 2001. She sustained injuries in the performance of duty on August 24, 1992 when her left knee struck the bumper of her postal vehicle. Appellant would later claim that this incident caused her to fall forward onto her hands and knees. OWCP accepted her claim for left knee strain, right hip contusion and lumbosacral strain. The question for determination is whether the accepted strains and contusion in 1992 caused a recurrence of disability for work beginning May 7, 2001.

To resolve a conflict between appellant's orthopedic surgeon, Dr. Grotz, and the OWCP referral orthopedic surgeon, Dr. Dorsey, OWCP properly referred appellant to an impartial medical specialist. OWCP provided Dr. Khasigian, a Board-certified orthopedic surgeon, with appellant's case record and a statement of accepted facts so he could base his opinion on a proper factual and medical history. Having related appellant's history and complaints, and having examined her and reviewed her medical records, it was Dr. Khasigian opinion that the injuries of August 24, 1992 were minor soft-tissue injuries that resolved within three to six weeks. To support this view, he pointed to minimal findings at the emergency room and essentially normal examinations when appellant later saw a rheumatologist and an orthopedist. Appellant's treatment, evaluation and x-rays revealed no structural abnormalities, and a few months postinjury her examinations were normal. Dr. Khasigian added that falling forward was not an injurious situation for the lumbar spine and that her current presentation showed no condition that was trauma related.

As the three accepted medical conditions would not have been present after three to six weeks from their onset in 1992, Dr. Khasigian concluded that there appeared to be no basis relative to those conditions for total disability beginning May 7, 2001. The Board finds that Dr. Khasigian based his opinion on a proper factual and medical background. The Board further finds that his opinion is sufficiently well reasoned that it must be accorded special weight in resolving the conflict. Dr. Khasigian supported his opinion with an explanation that was sound, rational and logical. Accordingly, as the weight of the medical opinion evidence fails to establish that the August 24, 1992 employment injury caused a recurrence of disability for work beginning May 7, 2001, the Board finds that appellant has not met her burden of proof. The Board will affirm OWCP's August 24, 2010 decision.

Appellant also appeals OWCP's May 28, 2010 decision denying her claim that the August 24, 1992 employment injury caused a recurrence of disability beginning November 14, 2008. She claimed that her employer had withdrawn her limited-duty position. Although a withdrawal of light duty can form the basis of a recurrence claim, the assignment withdrawn must have been made specifically to accommodate the employee's physical limitations due to her work-related injury or illness. Here, the record does not show that the permanent light-duty job offer that appellant accepted under protest on June 25, 2007 was made specifically to accommodate her August 24, 1992 employment injury. Indeed, the weight of the medical opinion evidence establishes that appellant's August 24, 1992 employment injury was short-lived and long resolved, leaving no residuals of the accepted left knee strain, right hip contusion or lumbosacral strain. If appellant were separated for being absent without leave for more than 365 days, then her absence from work was unrelated to her 1992 employment injury.

If she were separated for her physical inability to meet the demands of her position, then the weight of the medical evidence does not support a causal connection to the minor soft-tissue injuries she sustained on August 24, 1992. As Dr. Khasigian explained, appellant currently suffers from conditions unrelated to her 1992 employment injury, including mild lumbar spondylosis with mild degenerative disc disease and neural foraminal narrowing without radiculopathy, right patellofemoral and lateral compartment joint space narrowing and chondromalacia without meniscal tear, as well as chronic patellofemoral arthrosis secondary to postural patellar subluxation and secondary chondromalacia due to postural abnormalities. Any disability for work caused by these medical conditions does not establish a recurrence as that term is defined.

The Board therefore finds that appellant has not met her burden of proof to establish that the August 24, 1992 employment injury caused a recurrence of disability beginning November 14, 2008. The Board will affirm OWCP's May 28, 2010 decision.

Appellant argues on appeal that Dr. Khasigian based his opinion predominantly on medical data received after the creation of the conflict, but his report clearly relies on the medical evidence contemporaneous to the August 24, 1992 employment injury. It was appellant's early treatment, evaluations and x-rays that confirmed the mild nature of her soft-tissue injuries. Dr. Khasigian concluded that her injuries resolved only a few months after onset because her examinations at that time were normal. He did not discuss appellant's permanent impairment ratings, but this does not diminish the probative value of his opinion so much as it calls into question the merits of appellant's schedule award. To be clear, OWCP accepted, and the weight of the medical opinion establishes, that the August 24, 1992 injury caused only soft-tissue injuries: a left knee strain, a right hip contusion and a lumbosacral strain. How these soft-tissue injuries caused permanent impairment to both of appellant's lower extremities is not before the Board on this appeal, so the Board will not review the merits of her schedule award.

As for her later recurrence claim, appellant argues that an injury on June 22, 2007 (OWCP File No. xxxxxx666) prevented her from being able to drive as required by her postal vision coordinator position, which was assigned to her under OWCP File No. xxxxxx429. Those claims are not material to the issue under consideration. On February 6, 2009 appellant filed a claim alleging that her August 24, 1992 employment injury caused a recurrence of disability on November 14, 2008. She has not met her burden to establish that claim.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that her August 24, 1992 employment injury caused a recurrence of disability for work beginning May 7, 2001 or November 14, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 25 and May 28, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 8, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board